



May 14, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-1973

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146581.

The Texas Department of Criminal Justice (the "department") received a request for information regarding security issues. You advise this office that the requested information falls into nine categories. You state that you are making some of the requested information available to the requestor including information in category 7. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.116, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

Initially, we note that section 552.022(a)(1) of the Government Code provides the following:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information appears to fall into the ambit of section 552.022(a)(1) and, therefore, only that portion which is confidential or is excepted under section 552.108 may be withheld. Section 552.116 is a discretionary exception and, therefore, not "other law" that makes the submitted information confidential. See Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Act can be waived). However, section 552.131 of the Government Code is considered "other law" that makes information confidential. Therefore, we will address your claims under sections 552.108 and 552.131 of the Government Code.

You claim that a portion of the submitted information is excepted under section 552.131 of the Government Code. Section 552.131(a) relating to department inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 states:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

. . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.131 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. The submitted documents in Exhibits 1, 2, and 3 pertain to investigations about inmate conduct such as attempted escapes. Therefore, we conclude that Exhibits 1, 2, and 3 are about an inmate and the department must withhold these exhibits under section 552.131, but must release basic information regarding any alleged crime involving an inmate pursuant to section 552.029(8).

Basic information includes the time and place of the incident, names of inmates and TDCJ officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.²

You also claim that the submitted information is excepted under section 552.108(b)(1) of the Government Code. In pertinent part, this section provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

Gov't Code § 552.108(b)(1). This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention).

²Because we find that, with the exception of information subject to public release under section 552.029, you may withhold Exhibits 1, 2, and 3 under section 552.131, we need not address your other asserted exceptions for these exhibits. We note that on January 21, 2000, the TDCJ board met and, acting under the authority of the final judgment in *Ruiz v. Estelle*, determined that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." *See Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Thus, the board has determined that information that is within one of the categories delineated in section 552.029 of the Government Code is not "sensitive information" that the department may withhold from the public under section 552.107(2) in conjunction with the *Ruiz* decision.

You contend that release of the submitted information would make it more difficult to assure the security and safety of department facilities. Having reviewed the submitted information, we agree that most of the submitted information, on its face, would interfere with law enforcement. However, some of the submitted information does not supply an explanation on its face of how release would interfere with law enforcement. As to this information, you have not adequately demonstrated how its release to the public would interfere with law enforcement. Because you have not provided this particularized explanation, you may not withhold it from public disclosure pursuant to section 552.108(b)(1) of the Government Code. We have marked the information in Exhibits 4, 5, 6, 7, and 8 that you must release. You may withhold the remaining information in Exhibits 4, 5, 6, 7, 8, and all of Exhibit 9 under section 552.108(b)(1) of the Government Code.³

We also note that the submitted information contains information that is excepted under section 552.117(3) of the Government Code. Subsection 552.117(3) provides for the confidentiality of home addresses, home telephone numbers, social security numbers, and family member information of department employees, regardless of whether the employees comply with section 552.024 of the Government Code. Based on the plain language of section 552.117(3), we believe that only the information of *current* employees is confidential under this provision. Therefore, under section 552.117(3), the department must withhold the home address, home telephone number, social security number, and family member information of the current department employees.

However, we note that section 552.117(1) makes confidential the same types of information covered by section 552.117(3) but for current *and former* employees of governmental bodies who request that this information be kept confidential under section 552.024. Therefore, section 552.117(1) requires the department to withhold the home address, home telephone number, social security number, and family member information of any former employees who have submitted timely elections under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987).

Moreover, the social security numbers of the former employees who have not submitted timely elections under section 552.024 may be confidential nevertheless under section 552.101 in conjunction with federal law. Social security numbers and related records are excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See* Open Records Decision No. 622 (1994). However, it is not apparent to us that the social security numbers were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after

³Having found these exhibits excepted under section 552.108, we need not address any other asserted exceptions to disclosure.

October 1, 1990, that authorizes the department to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, the department should ensure that these numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, the department must release the marked information but withhold section 552.117 information and social security numbers that are confidential under federal law. The department may withhold the remaining submitted information in Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 9.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

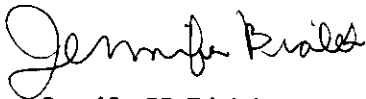
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 146581

Encl: Marked documents

cc: Mr. Brian Collister
KMOL-TV
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San Antonio, Texas 78205
(w/o enclosures)